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CURRENT TOPICS

Sir Harold Nevil Smart

We record with deep regret the death on 15th December of Sir Harold Nevil Smart, C.M.G., O.B.E., J.P., at the age of 67. As immediate Past President of The Law Society his service to his fellow solicitors at a time of failing health is fresh in the minds of all. Admitted in 1907, he practised in the City of London and became a partner in Messrs. Janson, Cobb, Pearson & Co. He took a prominent part in the corporate life of the City and was a Past Master of the Worshipful Company of Solicitors of the City of London. A member of the Council of The Law Society for many years, Sir Nevil Smart was elected President for 1949–50, a year during which the cares of that office were heavy: the final shaping of the legal aid machinery and the preparations for the London Conference of the International Bar Association were but two examples among many. He was created a Knight Bachelor in the Birthday Honours this year.

Professional Premises

Before the Committee stage of the new Leasehold Reform Bill takes place it is right and there is still time to press the professional man's grievance that he is offered no prospect in the near future of any protection from eviction from his office unless it is also his residence. Solicitors rarely live in their business premises and their grievance is real. Many medical practitioners live on the premises where they practise their profession, but many do not, and a correspondent in *The Times* of 12th December pointed out that the Government had taken over their practices and had left them responsible for the provision and maintenance of their surgeries. "Without the promised health centres," he wrote, "we have thus become something less than shopkeepers, for we are now denied their protection." It will be interesting to see whether these vital matters are dealt with in Committee, as the Solicitor-General has hinted (see p. 843, *post*).

Maintenance Orders Act, 1950

This Act comes into operation on 1st January, 1951, and will effect a much-needed reform in favour of wives whose husbands have gone to Scotland or Northern Ireland and of mothers of illegitimate children in comparable circumstances. *Berkley* v. *Thompson* (1884), 10 App. Cas. 45, *Forsyth* v. *Forsyth* [1948] P. 125, and *Macrae* v. *Macrae* [1949] P. 397, are no longer good law. Taking Pt. I first, s. 1 of the new Act enables an English magistrates' court to make a maintenance order against a husband in Scotland or Northern Ireland if the wife resides in England and the parties last resided together here. English magistrates' courts are further given jurisdiction to make such an order against a husband in England in favour of a wife in Scotland or Northern Ireland. Such courts may also vary and revoke maintenance orders in proceedings by or against husbands or wives in Scotland and Northern Ireland. Section 2 confers similar powers on English magistrates' courts in regard to making, varying and revoking orders under the Guardianship of Infants Acts. By s. 3 (1) an affiliation order may be made against a man

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residing in Scotland or Northern Ireland by an English magistrates' court if the relevant act or intercourse took place here; further by s. 3 (2), where the mother resides in Scotland or Northern Ireland, an English court for the place where the father is may make an order on her application against him. English courts may also vary and revoke affiliation orders in proceedings by or against a person in Scotland or Northern Ireland. At any time during 1951, but not after, proceedings for an affiliation order may be taken under s. 3 (1) in respect of a child born before 1st January, 1950, if the father ceased to reside in England within one year from the birth and the English court would have jurisdiction if he were resident here immediately before the mother's application. Contribution orders under the Children and National Assistance Acts may be made in English magistrates' courts against persons resident in Scotland or Northern Ireland and contribution orders may be varied and revoked by the English courts. Later sections confer comparable powers on the sheriff in Scotland and magistrates' courts in Northern Ireland as respects persons in England. Section 15 provides for the service of process to give effect to the Act but forbids arrest on failure to appear. Part II permits the registration in the courts of Scotland and Northern Ireland of orders made by the High Court of England under the Matrimonial Causes Act, 1950, ss. 19 to 27 (for maintenance and alimony in proceedings for divorce, judicial separation, etc.), orders made by any English court under the Guardianship of Infants Acts, and separation, maintenance, affiliation and contribution orders made by English magistrates' courts. Orders of the High Court are registered in the Court of Session or the High Court of Northern Ireland and all other orders in the sheriff court in Scotland and in the magistrates' court in Northern Ireland within whose jurisdiction the defendant is. Orders so registered may be enforced in the same way as if they had been made by the court of registration.

Damages for Shooting

IN *Norcliffe* v. *Cawthorne* at Otley County Court, on 4th December, the plaintiff failed in an action for damages against a neighbour, who, it was alleged, had, while standing in his own garden two doors away, shot at a starling, causing it to flutter and injure the plaintiff's eye. It was submitted for the defendant that, even if the facts were as stated, a reasonable person could not be held to contemplate a combination of circumstances whereby the plaintiff might be struck by the bird fluttering away and falling. As the plaintiff had not satisfied the court that he had suffered injury from the accident judgment was entered for the defendant with costs, and the interesting question whether damages were recoverable in such circumstances was left undetermined. His Honour Judge B. R. RICE-JONES, however, said that the case was unusual, and from that it would seem to follow logically that the accident was one which the defendant could not be expected, as a reasonable man, to foresee. Useful precedents on the subject of what a reasonable person can be expected to foresee are *Stanley* v. *Powell* [1891] 1 Q.B. 86 (the ricochetting bullet case) and *Fardon* v. *Harcourt-Rivington* (1932), 76 SOL. J. 81 (the dog in the closed motor-car case).

An Illegal Meal

A CLIENT recently, after signing a document binding him to purchase a house for £1,500, swallowed part of the document. This reckless act, according to *The Times* of 12th December, took place at a solicitor's office, and the sequel took place in the Edinburgh Sheriff's Court, where the deed swallower was fined £10 for malicious damage to a document. It was said on his behalf that he could not afford to buy a £1,500 house, but in these days of belt-tightening he cannot escape the suspicion of having attempted to obtain a meal on credit, especially as he does not seem to have bitten off more than he could chew. The offence which was proved, further demonstrates the futility of short cuts in the law, about which a learned Scots Lord of Appeal discoursed so admirably last week in Edinburgh. Among the many important leading cases which have not yet been fought, much less reported, not least important is that which would decide whether a memorandum of a contract which reposes in the digestive tract of the person signing it or his lawfully authorised agent can be relied on in order to render the contract enforceable under the Statute of Frauds. Possibly secondary evidence of its previous existence would be admissible, although it might seem to follow, from the fact that the memorandum can be enforced even though it comes into existence long after the contract which it evidences, that it cannot be enforced if it vanishes from existence. This is the ultimate problem occasioned by memorandum swallowing, although the immediate personal problem was, as the sheriff, Mr. J. G. GILCHRIST, K.C., said, that the defendant could not escape the consequences of his unusual meal.

"Law Dress Plan"

UNDER the headline "Student Calls Law Dress Plan Snobbish" the *Yorkshire Evening Post* of 22nd November published the news item that members of Leeds University Students' Law Society were considering wearing a white collar and black tie, bowler or Homburg-type hats, dark suits and overcoats, plus an umbrella in order to appear "more dignified." A member of the Students' Union commented, in a letter to the newspaper, that it was "petty behaviour" and a perverted form of snobbery and smacked of uniformity and regimentation. Those being the views of the students on this exciting subject, it remains for practitioners to give their casting vote, and we respectfully suggest that the maxim "let sleeping dogs lie" should be applied, and that the *status quo ante bellum* be restored. This, it is submitted, would most please solicitors, who expect articled clerks to dress soberly for their office work, but do not object if they wear bright sports jackets and flannel or even corduroy trousers when attending lectures. The tendency to uniformity in modern dress is as manifest in sports attire as in formal morning suits, and practitioners may well reflect, if they see a drove of students going to their lectures, that "*plus ça change plus ça reste la même chose.*" We ourselves are in favour of Homburg hats, dark suits and umbrellas, as the alternative seems to be a distracting eighteenth century competition in dandyism.

Recent Decision

In *R.* v. *Birmingham* (*West*), *etc.*, *Rent Tribunal; ex parte Edgbaston Investment Trust, Ltd.*, on 12th December (*The Times*, 13th December), a Divisional Court (the LORD CHIEF JUSTICE, and HILBERY and PARKER, JJ.) held that a payment, in order to constitute a premium within the meaning of the Landlord and Tenant (Rent Control) Act, 1949, must be made to the landlord, and where tenants were parties to an agreement between landlords and builders that the landlords should pay the builders £9,000 and eighteen tenants should pay them £500 each, towards the cost of converting a building into eighteen flats, the payments of £500 each were not premiums.

EXPIRY OF COURTS (EMERGENCY POWERS) ACT: INCIDENTAL EFFECTS

LEGISLATION by reference has, no doubt, points in its favour from the standpoint of the parliamentary draftsman, the Legislature and others who have simultaneous access to the whole of the statute book. But, just as it can lead to difficulties of interpretation, so it can be dangerous for the practitioner who is too busy to carry out exhaustive cross-referencing of his own copies of the statutes. There was a riot of reference in war-time statutes. When Parliament passed these various emergency Acts, it usually signalised their temporary nature by prescribing for them a limited duration, though some, like the National Registration Act, seem to have come to stay, and some (e.g., the Landlord and Tenant (War Damage) Acts) were meant to be part of the permanent law. In the former world war, the expression "the present war" or "the present hostilities" or some equivalent general phrase was popular in statutes, and occasionally (e.g., Finance Act, 1942, s. 26) "the present war" was used in a 1939–45 Act. By subsequent definition (Termination of the Present War (Definition) Act, 1918, and S.R. & O., 1921, Nos. 1276 and 1284) all such phrases in first-war statutes and agreements, etc., came to mean, unless otherwise defined, a period ending with August, 1921. In 1939 and subsequently the more usual practice was to adopt different periods for different Acts. For instance, five years, or during the existence of a state of war and three months thereafter (Clergy (National Emergency Precautions) Measure, 1939, later amended and since expired); or until such date as might be appointed (postal orders to be temporarily legal tender, s. 2 of the Currency (Defence) Act, 1939). The most common provision for termination postulated a date on which an Order in Council declared the "emergency which was the occasion of the passing of this Act" to have come to an end.

All the main war-time statutes, depending theoretically on the continuance of "emergencies" which were distinct from one another, were thus capable of terminating at different times. But some of the minor Acts did not enjoy the privilege of separate emergencies of their own. Thus the Landlord and Tenant (Requisitioned Land) Acts, 1942 and 1944, are linked with the Compensation (Defence) Act, 1939, which appears to be still in force. The Settled Land and Trustee Acts (Court's General Powers) Act, 1943, was originally geared to the Emergency Powers (Defence) Act, 1939, but we may topically note that it was recoupled later with s. 9 of the Emergency Laws (Transitional Provisions) Act, 1946, and will therefore effectually expire, along with the Evidence and Powers of Attorney Act, 1940, and other Acts, on 10th December 1951, unless further extended (Emergency Laws (Continuance) Order, 1950: S.I. No. 1770).

The object of this note is to call attention to some of the statutory provisions which refer in terms to the Courts (Emergency Powers) Act, 1939, so as to be affected as regards their duration or operation by the recent Order in Council (S.I. 1950 No. 1647) declaring that the 8th October now just passed was the date on which there came to an end the emergency which was the occasion of the passing of the 1939 Act. It is to be deplored that the system of reference in these matters is entirely a "one-way" system: no mention is made in the Courts (Emergency Powers) Acts or in the recent order (even by way of an explanatory note) of the fact that other statutes are harnessed in this fashion. We do not deserve the implied compliment to our familiarity with the by-ways of legislation.

It is true that it was incidentally publicised that the LIABILITIES (WAR-TIME ADJUSTMENT) ACTS, 1941 and 1944, would terminate concurrently with the Courts (Emergency Powers) Act, 1943. (Liabilities adjustment proceedings commenced or any scheme of adjustment approved before the 8th October, 1950, are to continue—s. 29 of the 1941 Act.) The other enactments affected are not, however, connected with the late restrictions on remedies in such a way as to bring them to mind on reading the Courts (Emergency Powers) (End of Emergency) Order.

By s. 64 (1) of the FINANCE ACT, 1940, the relief in respect of death duties payable on the death, from active service causes, of a member of the forces is extended to cover deaths of members of the merchant navy "from causes arising out of the operations of war" (see *Re Pitt* (1945), 89 SOL. J. 554) "during the period of the present emergency"; and by s. 46 of the FINANCE ACT, 1941, the same relief was further extended to *any* death from injuries "caused by the operations of war" received during the same emergency period but within twelve months before the death. The sections also provide for total remission of death duties and exemption from aggregation in respect of property passing twice "during the period of the present emergency" on successive deaths which both fulfilled the "killed in war" conditions. Again by s. 45 of the FINANCE ACT, 1941, an absolute gift made before the donor's death for the use of His Majesty is exempt from estate duty on the death of the donor if the gift was made during the like emergency period. This period terminated on the 8th October, 1950, for all three sections define the crucial term by reference to the Courts (Emergency Powers) Act period.

The writer's researches have yielded only one other example of a statute not since repealed which makes any vital reference to the Courts (Emergency Powers) Act period of emergency, but he would hesitate to say that there may not be others. The REMISSION OF RATES (LONDON) ACT, 1939, appears to be still law, and it now transpires that it will continue in force for two years from the 8th October, 1950 (s. 2 (2)). Its effect is to extend to rating authorities in the administrative county of London (including the City) the power which other authorities have enjoyed since the Rating and Valuation Act, 1925 (see s. 2 (4) of that Act) to reduce or remit the payment of general rates on account of the poverty of the person liable. The limited scope of the Act is discussed in the judgment of the Divisional Court in *Borough of Stepney* v. *Woolf* [1943] K.B. 202.

Do not let us forget that others besides the Legislature had occasion to hazard a description of the uncertain span of hostilities and aftermath. There must be many agreements and deeds in existence which refer in some terms or other to the war or emergency period. Apart from the Validation of War-Time Leases Act, 1944, which dealt with the specific difficulty of tenancies which offended against the requirement that a demise must be for a period certain, there is as yet no general legislation affecting such documents. It is believed, however, that some draftsmen, taking a leaf from the statute book, made use of the Courts (Emergency Powers) Act as a measure of the duration of their own documents. All in all, the 8th October, 1950, though a Sunday, was anything but *dies non*.

"V. I."

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Costs

BANKRUPTCY—II

We were considering in our last article the position of a solicitor in relation to his costs where he acted for a bankrupt; and we will now deal briefly with his position where he is acting for the trustee in bankruptcy.

In the first place, it will be observed that the solicitor for the trustee does not enjoy absolute priority in the matter of costs, and the degree of priority which he does enjoy will depend on the purpose for which he has been employed. The actual expenses incurred in realising the assets of the estate take absolute priority (see r. 117 of the Bankruptcy Rules, 1915), so that if the costs are incurred in actually getting in the assets then they will be paid before all other costs and expenses. Such costs will include, for instance, those incurred in an action for the recovery of a debt due to the estate of the bankrupt, the collection of a legacy due to the bankrupt, or other similar matters.

The estate of the bankrupt is liable for these costs before any others, and it is not until these have been paid, as well as the fees and expenses of the official receiver, the remuneration of the special manager, if any, the costs of the petitioner, the remuneration of the person appointed to assist the debtor in the preparation of his statement of affairs, and the trustee's actual expenses, which will not include the costs of his solicitor, that the costs of any person properly employed by the trustee with the sanction of the committee of inspection will be paid. It will be seen, therefore, that the solicitor of the trustee is well down the list of priority payments. However, in the event of the estate proving to be insufficient to support all these payments, the solicitor employed by the trustee is entitled to look to the trustee personally for his costs since his client is the trustee and he is entitled to assume that his costs will be met fully. On the other hand, where the trustee has warned him that his costs may not be met in full out of the estate, and has intimated that he will not be liable personally for any such costs as may not be so recovered, the solicitor obviously has no remedy against the trustee personally. The solicitor has no independent right against the estate of the bankrupt, and such rights as he does possess are those of his client, the trustee. It follows from this that if the trustee has been guilty of misconduct in relation to the estate, then the court may refuse to allow his solicitor's costs to be paid out of the assets of the estate: see *Re Pooley, ex parte Harper* (1882), 20 Ch. D. 685.

The position differs from that of the solicitor who is appointed to act for a liquidator in a voluntary liquidation of a company. In the latter case the liquidator is the agent of the company, and the solicitor is appointed to act for him in his capacity of agent, and must thus look to the company for the payment of his costs and not to the liquidator personally: see *Re Trueman's Estate, Hooke* v. *Piper* (1872), L.R. 14 Eq. 278. In the case of a trustee in bankruptcy, however, the trustee is not the agent of the bankrupt. He is acting as a principal in the winding up of the estate, and a solicitor appointed by him is appointed by him as a principal and not as an agent, and the solicitor must look to his principal for the payment of his costs.

An important point to be noticed is that the trustee in bankruptcy must obtain the sanction of the committee of inspection to the employment of a solicitor, and he should obtain the sanction before the work is performed. Where the solicitor is employed by the Official Receiver, before the appointment of a trustee, then the sanction of the Board of Trade is required. There must, of course, be no suspicion of undue influence, so that where a clerk of a solicitor is on the committee of inspection, then it would be improper for the solicitor to be employed by the trustee, even with the sanction of the committee of inspection, and if he is employed in such circumstances, then his appointment will be set aside by the court: see *Re Gallard* [1896] 1 Q.B. 68.

The committee should not give a general sanction to the employment of a solicitor by the trustee, but a separate authority should be given for each matter in which the trustee desires to employ a solicitor. Moreover, the committee should, in giving their permission, specify a maximum limit to the amount of costs to be incurred, but the committee may extend the limit on an application made by the trustee either before the limit is reached, or within one month after the limit has been exceeded. This is an important point to be watched by solicitors who are retained by a trustee in bankruptcy, and in each case where they are instructed they should enquire whether the sanction has been obtained and the limit of costs. Admittedly, it is the duty of the trustee to ensure that the sanction of the committee is obtained before the solicitor is engaged, and if the sanction has not been obtained and the court refuses to permit the solicitor's costs to be paid out of the estate, then it seems that the trustee will be personally liable for them. It is essential, however, that the solicitor knows the limit to the amount of costs, and, knowing this limit, he should keep a very careful watch on the amount of his costs. This is especially important where an action is involved and counsel's fees are being incurred.

When a bill of costs is taxed in bankruptcy matters the taxing master will require from the trustee in bankruptcy a copy of the resolution of the committee of inspection authorising the employment of the solicitor and specifying the limit to the amount of costs to be incurred. If the bill exceeds this limit, then the taxing master will only authorise the payment of the limit out of the estate, and the payment of the balance must be a matter of arrangement between the solicitor and the trustee. If the solicitor has been advised of the limit authorised by the committee, then it is difficult to see how he can justify a demand for the balance from the trustee. In any case, moreover, knowing the rules, it seems to be the duty of the solicitor to enquire as to the limit where he has not been advised thereof by the trustee, and if he has not enquired, and it subsequently appears that his costs exceed the amount of the limit authorised by the committee, then he can hardly blame the trustee.

It will be recalled that r. 103 (2) of the Bankruptcy Rules, 1915, provides that in small bankruptcies, that is bankruptcies where it is not anticipated that the assets will exceed £300, the solicitor will only be entitled to three-fifths of his costs "in all proceedings under the Act", where such costs are payable out of the estate. "All proceedings under the Act" would seem at first sight to include any work done in connection with the estate of the bankrupt, but this is not so, and it is only proceedings in respect of which the scale under the Bankruptcy Rules applies that are included within the ambit of the Rule. This is the effect of the decision in the case of *Re Weighill, ex parte the Official Receiver* [1909] 1 K.B. 92, although in the latter case it was made clear that there was room for argument that the rule applied not only to proceedings to which the bankruptcy scale applied, but also to all proceedings in connection with the estate of a bankrupt. However, the fact remains that so far as established precedent is concerned the rule applies only to matters which are covered by the scale. So far as other matters are concerned, whether the assets exceed or are less than £300, the full charges may be

claimed from the estate. Thus, if a solicitor is concerned with matters of conveyancing in getting in the assets of the estate, he will be entitled to the full scale charges under the General Order of 1882.

It will be observed that the rule applies where it is not anticipated that the assets of the estate will exceed £300. This means that it is not anticipated at the time when the costs are taxed that the assets of the estate will exceed £300. Where it afterwards appears that the assets of the estate are more or less than was at first anticipated, then the taxing master will amend his allocatur, so that if the costs had previously been allowed in full and it turns out that the assets are less than £300, then he will reduce the amount which he has allowed to three-fifths thereof. Similarly, where the assets prove to be more than £300, whereas it was formerly estimated that they would fetch less than that amount, then the taxing master will increase the amount allowed on his allocatur (see r. 104).

It will be observed that r. 103 refers to "the estimated assets of the debtor"; this means gross assets, and it is submitted that it must mean gross assets before the costs of collecting them have been deducted, since the costs of collecting the assets are a payment to be made in priority to all other costs and expenses. These costs of collecting the assets will have to be taxed in the same way as any other costs and expenses to be paid out of the estate, and, if they come within the definition of "proceedings under the Act," will be subject to the same limitation under r. 103 as any other costs and expenses to which the rule relates.

It was decided in *Re Pryor, ex parte Board of Trade* (1888), 59 L.T. 256, that a solicitor who assists in the distribution of the estate of the bankrupt cannot charge for his services in respect of purely administrative work on a professional scale. Regard must be had in this respect to s. 83 of the Bankruptcy Act, 1914, which provides that where a trustee receives remuneration for his services as such no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or the rules to be performed by himself. It is clear from this that, if the trustee requires the solicitor to do any of the work which is normally covered by the trustee's remuneration, then he must be prepared to pay for the work himself, for it will not be allowed as a charge against the assets of the estate. Moreover, some care will have to be exercised with regard to the question of paying the solicitor himself for any work which the latter does in assisting the trustee in the performance of his own duties, for s. 82 (5) of the Act specifically states that a trustee shall not, under any circumstances whatever, make any arrangement for giving up or give up any part of his remuneration to any solicitor employed about the bankruptcy. Whether this means that there is nothing to prevent the trustee from employing a solicitor to do part of that work, provided he employs some solicitor other than the one who is performing professional work with the sanction of the committee of inspection, is a matter for conjecture, but it is quite clear that any solicitor who is asked to do any of the work which is normally covered by the trustee's remuneration should approach the matter with caution, for it may very well be that he will have to perform the services without recompense.

J. L. R. R.

A Conveyancer's Diary

TESTAMENTARY OPTIONS

THE interesting thing about the two testamentary options in the recent case of *Re Fison's Will Trusts* [1950] Ch. 394 is that although both were held to have been well exercised by the donees, the principles on which this decision, so far as it concerned either option, was reached appear to some extent at any rate to be mutually contradictory.

The first option was contained in a bequest of shares. The testator bequeathed one fourth part of his holdings of shares in the A company and the B company to his trustees upon trust to pay the income thereof to his wife during her life, and after her death the trustees were directed to offer the said one fourth part of the testator's shares in these two companies to the testator's two sons at par value in equal shares. The testator then went on to provide for the event (which did not happen) of either or both of his sons failing to buy the shares in accordance with the option.

The testator died in 1920, and immediately before his death he had shares in both the named companies, but in the case of both holdings certain important changes occurred between the date of the testator's death and the date of the death of his wife, who died in 1949. The A company was absorbed by another company and the 752 ordinary shares of £10 each in the A company which the trustees held before it was absorbed were then exchanged for 15,040 ordinary shares of £1 and 3,760 preference shares of £1 each in the new company. The preference share capital of the new company was later rearranged and 5,848 preference shares bearing a lower rate of interest were issued to the trustees in substitution for the 3,760 shares previously issued to them. The result of these transactions was that the nominal value of the one fourth share in the testator's holding in the A company comprised in this option had been very nearly trebled between the date of the testator's death and the date when the option became exercisable, and the market value of these shares was at the latter date considerably higher than their nominal value.

The B company's position was that, in the interval between the two relevant deaths, it was wound up and the trustees received a sum of nearly £14,000 in respect of the 112 preference shares of £10 each which formed one fourth part of the testator's entire holding in this company. Most of this money had been invested by the trustees, but a small part was still in their hands in cash when the testator's widow died and the testator's two sons exercised the option given them by this part of the testator's will. The question which then arose, substantially, was whether the changes which had affected the shares in question had rendered this option inoperative or not.

The principle on which questions of this kind fall to be decided is well settled. If an option is given to purchase property in which a life interest is also created, and during the subsistence of the life interest changes occur which affect the property, the option is exercisable and the donee of the option entitled to follow the property in its changed state if, on consideration of all the circumstances, it is concluded that the option was given with the object of conferring some bounty on the donee. A number of earlier decisions illustrating the application of this principle were examined by Romer, J., in the present case. In *Re Cant's Estate* (1859), 4 De G. & J. 503, for example, an option to

purchase a piece of land at a named price was held to be operative despite the purchase of the land during the interval of the life-tenant's interest by a railway company, under compulsory powers, at more than twice the named price, with the result that the donee of the option received what was in effect a legacy of the difference between the named price and the price paid by the railway company ; the court treated the matter as one of the testator's intention, and concluded that in the particular case it had clearly been the testator's intention to benefit the donee of the option whatever happened. The principle being settled, the question in the present case also resolved itself into one of construction, and on this point Romer, J., observed that when a man makes provision in his will under which one of his children is entitled to take one or more of his assets at a fixed price, that in itself is an indication of bounty, for it was otherwise open to any of his children to buy the property or to bid in the market for it against the world. Seen in this light, the option in respect of the shares was clearly exercisable notwithstanding the intervening changes affecting them, and the testator's two sons were held to be entitled to purchase in equal shares for the sum which the shares in question were worth at par value at the testator's death (*a*) the ordinary and preference shares in the new company held by the trustees in substitution for the one fourth part of the testator's holding in the A company, and (*b*) the investments and cash representing the sum received by the trustees in respect of the one fourth part of the testator's holding in the B company on the winding up of that company.

The effect to be given to the direction that the shares in question should be offered "at par value" was in itself a question of some difficulty, and Romer, J.'s decision on the point was to some extent influenced by the difficulty of selecting any other method of calculating the purchase price than that which he adopted. But it is the element of bounty found to have been present in this option, and not the mechanics of its operation, that contrasts with the decision on the other option in the testator's will, which it is now time to consider.

This other option was contained in a devise of certain specified real estate, which the testator devised to the use of his wife for life and which he directed should form part of his residuary estate after her death, with a proviso that before selling the said property his trustees should after the death of his wife offer it to his son F, if living, at a named price. When the testator's wife died in 1949 this real estate was subject to (*a*) an equitable charge in favour of the testator's residuary estate created by the trustees to clear off a charge on this real estate which had originally been created by the testator in favour of a bank, and (*b*) a mortgage created to pay estate duty and to complete the purchase of some cottages adjoining the real estate in question which the testator had contracted to purchase before his death. The equitable charge was thus a charge which, in another form, had attached to the property before, and existed at the time of, the testator's death, while the mortgage had been created after the testator's death and was a wholly new incumbrance, but this distinction between the two incumbrances was not referred to on the question which arose in regard to this option. This question was whether F, in exercising this option, was entitled to have the property conveyed to him free from these two incumbrances or not.

As the testator died before 1926, the Real Estate Charges Act, 1854 (Locke King's Act), was applicable. By s. 1 of that Act the heir or devisee, in the absence of any contrary intention expressed by the deceased, took land descending or devised to him subject to any charge by way of mortgage affecting the land at the death, and was not entitled to have the charge discharged out of any other part of the estate. If, therefore, F was a devisee of the real estate in question in the present case, this provision applied to make him take it subject to the incumbrances, but if, as was argued on his behalf, the true effect of the transaction of purchase under the option had been to make him a purchaser of the property, Locke King's Act had no application and he was entitled to have the property conveyed to him at the price specified in the will free from the incumbrances affecting it at the death of the tenant for life.

The judgment on this question was complicated by the necessity of examining some earlier and not easily reconcilable decisions, but in the end Romer, J., followed the most recent analogous decision, *Re Wilson* [1908] 1 Ch. 839, in which Warrington, J., had held that a donee of a similar option, exercisable on the death of a life-tenant of the property subject to the option, if he exercised the option, elected to become a purchaser. This was held to accord with the intention of the testator (". . . the intention of the testator was to place the [donee of the option] in the same position as any outside purchaser . . ." [1908] 1 Ch., at p. 844).

The element of bounty was thus found to be present in both options, but in order to give effect to the intention of the testator the court had to hold, in regard to the first option, that the donees of the options were in effect legatees of the amount by which the value of the property comprised in the option exceeded the specified purchase price, and in regard to the second option that the donee, once he had exercised his option, had become a purchaser of the property and not a devisee. The result was one that the testator would doubtless have applauded, but it still looks a little odd.

"A B C"

Landlord and Tenant Notebook

QUIET ENJOYMENT AND EVICTION

READERS who have perused the recently published London Journals, 1762–63, of Mr. James Boswell, may (even if familiar with the corresponding entries in the "Life of Johnson") have been astonished by the information given in the entries relating to the 5th and 6th days of July, 1763. In them, the diarist gives us some account of trouble he had with his landlord, and how he sought the advice of a London magistrate, and of what the advice (given by the magistrate's clerk) was. Many of us will not have been aware that the practice of treating justices of the peace as free legal advisers was of such long standing ; those to whom this was not news will yet have been surprised to learn the results obtained in this case.

It appears that Boswell had taken a yearly tenancy of certain apartments (in Downing Street, Westminster), including a parlour which he was to use in the mornings only. An arrangement of that kind is, of course, not repugnant to a tenancy ; a good many leases of offices exclude the tenants after certain hours and on Sundays, and in *Westminster Council* v. *Southern Railway* [1936] A.C. 511 a considerable assortment of contracts of tenancy providing for intermittent occupation was reviewed. On the evening of 5th July

Boswell invited two friends home, they partook of (intoxicating) refreshments in the parlour, and became boisterous and noisy; whereupon the landlord, one Terrie, rapped furiously at the parlour door, and in response to his tenant's inquiry "bawled out that he would be in, and would turn us every one out. He then called the watch, desired him at his peril to bring more of his brethren, and said he charged us with a riot, and would send us to the round-house. . . . However, when the watch returned, he began to dread the consequence of false imprisonment, and desisted. But he still behaved very impertinently." Boswell restrained himself, or was restrained by his recalling the terms of his tenancy above mentioned; he determined, however, to quit the house, one of his friends being of the same opinion.

It is not clear whether Mr. Terrie changed his mind after a recount, being well aware that three people cannot indictably riot; but for the purposes of the "Notebook" what is of greater interest is whether his threat to turn everyone out was limited in scope to the parlour or extended to the whole of the demised premises.

However, on the following morning the diarist was advised by one Coutts to go to "Sir John Fielding's, that great seat of Westminster justice." Boswell had, of course, had no training in the English law of landlord and tenant; but one might have expected him to seek the opinion of someone who was conversant with that law; in those days, magistrates had not even had the provisions of the Small Tenements Recovery Act, 1838, thrust upon them. Still, the applicant certainly heard what he wanted to hear. He was received by a clerk who "hears the causes, and gives his opinion. As I had no formal complaint to make, he did not carry me in to the Justice, but told me that as my landlord had used me rudely, although I had taken my lodging by the year, I was only obliged to pay him for the time that I had lived in his house."

Well, there may have been a condition defeasant in the particular tenancy agreement entitling the grantee to determine the term forthwith in the event of the grantor using him rudely; but I doubt whether a precedent will be found in any work on the subject, and cannot help thinking that the clerk misinterpreted the law relating to eviction and quiet enjoyment.

As I have mentioned, petty sessional courts could at that time have had little or nothing to do with this branch of the law, and the court library is not likely to have included many works on the subject. If it did, it is a pity the clerk did not turn up *Salmon* v. *Smith* (1669), 1 Wms. Saund. 202, and the notes appended to the report by the learned author, including the following: "And the plea must state an eviction or expulsion of the lessee by the lessor, and a keeping him out of possession until after the rent became due; otherwise it will be bad. A trespass by the lessor will be no suspension of the rent. . . ." But Mr. Terrie, either through ignorance or indifference, appears to have taken no steps to enforce his rights under the agreement, and Mr. James Boswell moved to more congenial surroundings: residential chambers in the Temple. "The method of living in the Inner Temple," he recorded on 17th July, "is, in my opinion, the most agreeable in the world for a single man."

The principle stated in *Salmon* v. *Smith* was applied, long after the above events, in *Newby* v. *Sharpe* (1878), 8 Ch. D. 39 (C.A.); one of the few occasions on which a judgment of Fry, J. (as he then was), was reversed. The defendant had let to the plaintiff part of a building for a term of three years, the lease expressly providing that the lessor would keep the premises in repair so that the lessee might store cartridges there. The rest of the building, or part of it, was already let to a gunpowder manufacturing concern under a twenty-one-year lease. Trouble arose when, during the term, Parliament passed the Explosives Act, 1875; the defendant considered, rightly or wrongly, that this made it illegal to store cartridges and gunpowder in the same building, and that cartridges so stored were liable to forfeiture, and one fine day he entered the plaintiff's premises and removed the cartridges. Some correspondence had preceded this incident; it was not clear whether cartridges actually came within the provisions of the new statute; and if they did, the prohibition was qualified in that a licence might be granted, and neither party had applied for one. (In the first case illustrating the effect of building restrictions on responsibility for dilapidations, *Maud* v. *Sandars* (1943), 60 T.L.R. 81, the defendant was held liable because he had not sought a licence, apart from anything else; in *Eyre* v. *Johnson* [1946] K.B. 481 the licence had been refused, but the landlord was held entitled to damages all the same.) But the defendant had made it clear that he would report to the authorities any arrival of cartridges, and on this the plaintiff sued originally for an injunction and damages for the loss incurred in having to store elsewhere, but at the hearing asked for and was given leave to amend by pleading breach of the covenant for quiet enjoyment. Fry, J., held that he had been justified in considering that the defendant had evicted him. The Court of Appeal reversed this judgment, holding that the removal of cartridges stored was a mere trespass, and the threat at most an unneighbourly act. "You must look not merely at the act of entry but to the circumstances of the case, and the intention with which the entry was made." It was plain that there had been no intention to put an end to the tenancy and that the entry had been merely temporary, while the amendment, which in effect changed the whole nature of the action in so far as it had enabled the plaintiff to raise a case of eviction, ought not to have been allowed.

It seems impossible to suppose that, if the test of circumstances and intention were applied to the incident in which Boswell was involved, there could have been a finding of eviction. Apart from the circumstances of trespass or encroachment, the mere fact that the landlord's threat extended to persons other than his tenant invited the inference that he was concerned with the immediate future only.

The mention made of this occurrence in the "Life of Johnson," incidentally, suggests that Boswell was not too happy about what he had been told. He told Johnson about it later in the day; this time the tenancy was described as having been for one year, which was not, in the circumstances, a serious discrepancy; but the wording of the narrative did not make it clear by whom the advice had actually been tendered. And it may well have been by way of reassurance that the learned doctor pontificated as follows: "Why, Sir, I suppose this must be the law, since you have been told so in Bow Street"; for he went on at least to contemplate the reverse, suggesting that in that case Boswell might use the premises as he thought fit, transferring the tenancy to an undesirable tenant, conducting experiments in physics, etc. If we had had furnished houses rent tribunals in those days, useful copy might have been supplied for the Press, if not for the law reports.

R. B.

The Board of Trade have appointed Mr. E. C. STIMPSON to be Official Receiver for the Bankruptcy Districts of the county courts of Nottingham, Derby and Long Eaton, Chesterfield, Burton-on-Trent, Boston, Leicester, and Lincoln and Horncastle.

HERE AND THERE

ASSIZE ADVENTURE

An accident, G. K. Chesterton once said, is only an adventure wrongly considered. After all it's the mishaps, the bad Channel crossings, the cars that break down on the Beddgelert Pass, the snail in the bottle of ginger beer we once bought, the hat we had to chase down Whitehall, that provide our most rewarding topics of conversation. These are the red-letter days. The days and nights when we have nothing whatever to grumble at pass unmarked into oblivion. When, therefore, I read of the complainings of judges of the lodgings assigned to them on their circuit travels I am always filled with innocent amazement. One would expect them, setting out on their quixotic quest of justice, through the strange tangle of native customs that cover this unbelievable island like an undergrowth, to assume the attitude of pioneers or explorers who would never dream of lamenting the absence of furnished hotel accommodation on the slopes of Everest or of a telephone system at Rumtifoo. If tribal custom presented me with a gold Jacobus at one town I would be in no mood to complain of a bristleless clothes brush at the next. If the head man welcomed me with horses and trumpets I would make shift with good grace if the pillows in the kraal were not stuffed with swansdown. If in some of the reserves the native art struck me as somewhat garish, I think I would be more inclined to laugh heartily, if privately, rather than to emulate the scathing irritation expressed by the late Sir Frank MacKinnon at the decoration of some of the interiors into which he was thrust on his circuit journeys. If Osbert Lancaster could find time to act as judge's marshal for a few months he might well find material for a new and more uproarious " Homes Sweet Homes."

SMILE JUDGES, PLEASE

The latest trouble, I see, has been at the Gloucester Assizes. At Gloucester apparently they are unused to tall, upright judges. At any rate Cassels, J., standing and, of course, lying six feet and a bit in his socks or bed socks, found the splendid four-poster provided for his rest presented him with the alternatives, painful at this season and in this state of the weather, of either extruding his feet from the bottom end or his shoulders from the top. He is reported to have solved the problem by the compromise of lying diagonally from corner to corner. The authorities concerned are, I understand, reluctant to part with their fine bed and are likely to counter any suggestion for its removal with a petition to be supplied with smaller judges. After all, this is not the bed of Procrustes; adjustments to fit it have no element of finality and a merciful Providence, by means of a series of ingenious hinges in the human bone structure, has bestowed on it a high degree of flexibility. Judges as a class seem strangely allergic to four-poster beds. Last year they were apparently complaining of the specimens in Durham Castle. But here, apparently, the gravamen of their criticisms was the very opposite of constriction, the vast spaciousness of the twelfth century fortress which made some of them yearn even for the homely familiarity of Stockton, whither there was some talk of transferring the assizes. " I think," said the Master of University College, which has its home there, " the chief grumble is that the rooms are not cosy. The Georgian four-poster beds have modern spring mattresses. I have slept in them without ill effects." The only ill effects on the judges were, one deduces, the homesickness of an inhabitant of the twentieth century strayed into a hinterland of the mediæval world.

LODGING AT LEWES

The business of providing lodging, worthy of the embodiment of royal justice, for a matter of a few days or weeks in the year, and so maintaining it all the twelve months round that it is fit and ready for the honorific visitation when it descends, is always something of a strain on local resources and official imagination. On the whole the best device is generally found to be to run the lodging as a normal inhabited house with tenants who undertake to evacuate it at the relevant times. But, human nature being what it is, there is always the danger of a certain sense of grievance lurking in the minds of the provisionally dispossessed. In Cardiff the lodging is the Mansion House, and last year's mayor complained bitterly: " I consider it most undignified that when judges arrive the first citizen has to be kicked out." Incidentally, he had an alternative complaint that when he did stay there he was living in the eighteen-sixties, a period apparently not unusual in the choice of appointments for the accommodation of the judges. Lewes, I hear, has just taken a step which would have delighted the heart of MacKinnon, L.J. The East and West Sussex County Councils are pooling their resources to acquire St. Anne's House, a pleasant Georgian ornament to the High Street, as a permanent judges' lodging. Between purchase price, adaptation and furnishing the cost will be about £19,000. With ten bedrooms, four reception rooms and four bathrooms their lordships ought to feel they have sufficient living space. Ensuring temporary furnished accommodation has been a constant worry. The curiously named Antioch House at the corner of the High Street and Rotten Row has lately been in use, with the occupants moving out when required. In the heart of the little old town it could yet provide the amenity of a two-acre flower garden, hidden away behind its fawn-painted frontage, for the judges' meditative walks.

Richard Roe.

REVIEW

The Law of Sewers and Drains. By J. F. Garner, LL.M., Solicitor. 1950. London: Shaw & Sons, Ltd. 25s. net.

This is a short work of some 160 pages which sets out in an easily understood form the main principles which underlie the law relating to sewers and drains under the Public Health Acts. It might more properly be called an Introduction to the Law of Sewers and Drains, for it does not provide such a detailed treatment of the subject as was to be found in MacMorran and Willis' standard text-book on the subject.

One of the chief difficulties about this branch of the law is its complexity and the large number of cases which are still relevant to-day. Mr. Garner's book is in the nature of a chart and, after a perusal of the appropriate section of his book, reference can be made if need be to the cases he cites and to the very detailed notes on many points which will be found in Lumley's Public Health. There are sufficient references in footnotes to cases and appropriate sections of the statutory provisions to enable this to be done, although there is no discussion of the cases themselves. There are few points relating to sewers and drains which are not at least touched upon in the book—even, for example, a point such as the rateability of sewers, although this receives only three lines of text and two lines of footnote. The book contains a chapter on highway drains, sewage disposal and sewage disposal works and the pollution of rivers and water courses, besides chapters dealing particularly with the ownership of sewers and the drainage of premises generally. It does not, however, contain any statement of the law applicable in the metropolis.

Within the limits we have indicated the book is readable, accurate and up-to-date and should be useful to those people, and there must be many, who find it hard to reach an answer on particular points in this branch of the law owing to the lack of any modern text-book of a straightforward character.

NOTES OF CASES

HOUSE OF LORDS

SAFE SYSTEM OF WORK: GOGGLES FOR ONE-EYED WORKMAN

Paris v. Stepney Borough Council

Lord Simonds, Lord Normand, Lord Oaksey, Lord Morton of Henryton and Lord MacDermott

13th December, 1950

Appeal from the Court of Appeal (93 Sol. J. 710; 65 T.L.R. 723).

The plaintiff was employed by the defendant council. He had suffered injuries to his left eye in an air raid in 1941. On 28th May, 1947, he was working on the back axle of a gully cleaner at one of the council's depots. He had to remove a bolt, but found that it was rusted in. He hit it with a hammer, and a chip of metal flew off and entered his right eye. As a result he lost the sight of that eye entirely, and became in effect a blind man. He was not wearing goggles at the time of the accident. Had he asked for them, he might have been provided with them; but it was not part of the council's system of work to provide goggles, and employees were not invited to use them. It was known to the council that the plaintiff had only one useful eye. The judge held that the council owed the plaintiff a duty to provide him with goggles and to require their use as part of the system of work whether or not they owed such a duty to other of their employees. He awarded the plaintiff £5,250 damages. The Court of Appeal reversed that decision, and the plaintiff now appealed. The House took time for consideration.

Lord Simonds, dissenting, said that Lynskey, J., had decided the case on the ground that a special duty was owed to the plaintiff as a one-eyed man; and in the Court of Appeal and in that House that was the relevant plea. He (Lord Simonds) did not dissent from the view that an employer owed a particular duty to each of his employees. He saw no valid reason for excluding as irrelevant the gravity of the damage which the employee would suffer if an accident occurred. He could not accept the view neatly summarised by Asquith, L.J., that the greater risk of injury was, but the risk of greater injury was not, a relevant circumstance. He found no authority for such a proposition; nor did it appear to him to be founded on any logical principle. But the gravity of the injury was only one of the relevant circumstances, and, while he could not accept the judgment of the Court of Appeal which was based on the view that it was irrelevant, unlike the majority of their lordships he found it impossible to uphold the trial judge, who had ignored a consideration essential to a proper determination of the duty of the defendants to the plaintiff. If the gravity of the damage was relevant, so also was the seriousness of the risk, and in the consideration of that question he (Lord Simonds) thought that the judge had fallen into error.

In his (Lord Simonds') opinion, on the evidence no other conclusions could be reached than that the defendants were not under a duty to provide goggles for the workmen engaged on the work in question, at least if they were two-eyed men, because the risk was not one against which a reasonable employer was bound to take precautions. It was from that premiss that the inquiry should proceed whether, nevertheless, in the case of a one-eyed man, they were bound to do so. Starting, as the judge did not, from the fact that it was not part of the system of work to provide goggles for two-eyed men because the degree of risk did not demand that precaution in a reasonable employer, he (Lord Simonds) did not think that there was evidence on which it could fairly be held that the same reasonable employer was bound at his peril to provide goggles for one-eyed men. He would dismiss the appeal.

Lord Normand said that whether the Court of Appeal's view, so clearly expressed by Asquith, L.J., was correct was of considerable importance, for the *ratio* of the decision would apply not only where the duty of care arose from the relationship of master and servant but in many other cases of alleged negligence. It was not disputed that the defendant employers' duty of care was a duty owed to their employees as individuals. But the defendants contended that, though it was not a duty owed to the employees collectively, they must take account in fulfilling the duty only of any disability which increased the risk of an accident's occurring. For that proposition no authority was cited, and in his opinion it was contrary to principle. The test was what precautions the ordinary reasonable and prudent man would take. The relevant considerations included all those facts which could affect the conduct of a reasonable and prudent man and his decision on the precautions to be taken.

The judgment of the reasonable and prudent man should be allowed its common everyday scope, and it should not be restrained from considering the foreseeable consequences of an accident and their seriousness for the person to whom the duty of care was owed. There remained the question whether, assuming that the fact that the appellant was to the knowledge of the respondents a one-eyed man was a relevant circumstance, the judgment of Lynskey, J., was in accordance with the evidence. The balance of the evidence inclined heavily against the plaintiff on the question of the usual practice of others. But that evidence necessarily concerned the normal case when the employee suffered from no special disablement. In the nature of things there could scarcely be proof of what was the usual precaution taken by other employers if the workmen had but one good eye. Since Lynskey, J., did not consider the evidence on practice and made no finding about the precautions which should be taken in the ordinary case and without reference to individual disability, he (Lord Normand) thought that his judgment was essentially a finding that the supply of goggles was obviously necessary when a one-eyed man was put to the kind of work to which the appellant was put.

The facts on which the judge founded those conclusions—the known risk of metal flying when that sort of work was being done, the position of the workman with his eyes close to the bolt which he was hammering and on the same level with it or below it, and the disastrous consequences if a particle of metal flew into his one good eye—taken in isolation, seemed to justify his conclusion. What precautions were needed to protect two-eyed men, and whether it could properly be held, in the teeth of the evidence of the usual practice, that goggles should have been supplied for them, were not questions which the judge had necessarily to decide. Therefore, though there might have been advantages of lucidity and cogency if the precautions needed for the protection of two-eyed men had first been considered and the increased risk of damage to which the one-eyed man was exposed had been expressly contrasted, he would allow the appeal.

Lord Oaksey concurred in allowing the appeal.

Lord Morton of Henryton also dissented.

Lord MacDermott concurred in allowing the appeal. Appeal allowed.

Appearances: *F. W. Beney*, K.C., and *R. M. Everett* (*W. H. Thompson*); *Edmund Davies*, K.C., and *Alan Stevenson* (*Thomas V. Edwards*).

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

COURT OF APPEAL

FACTORIES: FENCING OF TRANSMISSION MACHINERY

Burns v. Joseph Terry & Sons, Ltd.

Somervell, Cohen and Denning, L.JJ.

27th October, 1950

Appeal from Hilbery, J.

The plaintiff, an employee in the defendants' factory, was injured by coming into contact, through his own negligence,

as Hilbery, J., found, with transmission so fenced as to be, in the ordinary way, quite inaccessible to workers. The plaintiff brought an action for damages, alleging that his injuries were due to the defendants' breach of the duty thus prescribed by s. 13 (1) of the Factories Act, 1937: "Every part of the transmission machinery shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced." Hilbery, J., held that the transmission machinery was securely fenced and that there was, therefore, no breach of duty on the part of the defendants. Alternatively, he held the plaintiff almost wholly to blame for his injury. The plaintiff appealed.

(*Cur. adv. vult.*)

SOMERVELL, L.J., after referring to *Vowles* v. *Armstrong-Siddeley Motors, Ltd.* (1938), 55 T.L.R. 201; *Carroll* v. *Andrew Barclay & Sons, Ltd.* [1948] A.C. 477; *Lyon* v. *Don Brothers, Buist & Co., Ltd.* [1944] S.C. (J.) 1, and *Sowter* v. *Steel Barrel Co., Ltd.* (1935), 154 L.T. 85, said that Mr. Hylton-Foster had submitted that machinery was not securely fenced unless it were so fenced as to prevent any accident, however improbable and unforeseeable the circumstances in which it happened, saving only the case where a man deliberately broke the fencing: it must be as secure as any fencing could make it. There was no decision on the point binding on the Court of Appeal, but the balance of *dicta* was slightly against counsel's contention. *Vowles* v. *Armstrong-Siddeley Motors, Ltd.*, *supra*, was very nearly a direct authority against the argument. To consider the question of construction, on principle, in his (Somervell, L.J.'s) view, the same test should be applied in this group of sections of the Factories Act, 1937, in deciding whether machinery was "securely fenced," as was applied in deciding whether it was "dangerous," namely, whether it was so in any reasonably foreseeable circumstances. That construction fitted in with the later words of s. 13 (1). If it were necessary to consider unforeseeable circumstances, the Legislature should and would have provided that all transmission machinery must be completely encased. It also fitted in with the later words of the subsection from another angle: those words contemplated that the position might make any fencing unnecessary. That being so, the "position" might well be such as to make fencing, for example, necessary on one side only. Mr. Hylton-Foster's argument negatived that possibility. Further, if the construction placed on the words by the trial judge were a reasonably possible construction, then, this being a statute imposing penalties, it should be adopted. Mr. Hylton-Foster said that the question was not whether what the plaintiff did was reasonably foreseeable, but whether the defendants should have reasonably foreseen the possibility of an accident. The question was whether a prosecution of the defendants would have succeeded before the accident happened. He (his lordship) agreed that that was the test; but he did not agree that Hilbery, J., had confined himself to considering the foreseeability of the plaintiff's conduct. The judge had considered all the relevant circumstances, and the appeal failed.

COHEN, L.J., agreed.

DENNING, L.J., dissenting, said that it was argued that, in considering whether a machine was securely fenced, the court must consider whether the action of the employee in getting caught by it could be foreseen. He could not see what that had to do with it: he thought that foreseeability only arose at the next stage, if and when it was said by the occupier that the machine was "in such a position or of such construction as to be as safe . . . as it would be if securely fenced." Once the prosecution proved the absence of fencing, then, if the occupier relied on the exception "as safe as if securely fenced," the burden was on him to prove it (see *Chalmers* v. *Speedwell Wire Co., Ltd.* [1942] S.C. (J.) 42, and *Carroll's* case, *supra*.) The test of the exception was foreseeability. Once foreseeability was accepted as the test of the exception, it could not also be the test of the primary obligation. His lordship referred to *Smethwick* v. *National Coal Board* (1950), *ante*, *p.* 270; 66 T.L.R. (Pt. I) 173; *Davies* v. *Owen (Thomas) and Co., Ltd.* [1919] 2 K.B. 39, and *Miller* v. *Boothman (William) and Sons, Ltd.* [1944] K.B. 337, and said that, in his view, foreseeability was not the test and, there being here no effective barricade, this transmission machinery was not securely fenced. It had not been suggested that the machinery was in such a position or of such a construction that it was as safe as it would have been if securely fenced. In his view there was a breach of s. 13 (1) to which the injury was due. As to contributory negligence, the plaintiff's age was only seventeen years and he would have made the occupier bear at least two-thirds of the damages. Appeal dismissed.

APPEARANCES: *H. B. H. Hylton-Foster*, K.C., and *J. Harvey Robson* (*Gibson & Weldon*, for *John Whittle, Robinson and Bailey*, Manchester); *R. Rawden Smith* (*Haslewood, Hare and Co.*, for *Bromley & Walker*, Leeds).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DONATIO MORTIS CAUSA: BANK BOOKS

Birch *v.* Treasury Solicitor

Evershed, M.R., Asquith and Jenkins, L.JJ. 27th November, 1950

Appeal from Roxburgh, J.

On 4th March, 1949, the deceased, who was in hospital in consequence of serious injuries sustained in an accident, told the donees, a nephew of her late husband and his wife, to go to her flat and to collect a black bag containing her bank books; she added that she wanted them to have the money in the banks if anything happened to her. Shortly after that conversation, she told the donees that she thought she was "finished" and, after inquiring whether they had collected the bank books, repeated her wish that they should have the money in the banks if anything happened to her. The deceased died on 29th March, 1949.

The bank books in question were a Post Office savings bank book, a London Trustee savings bank book, a Barclays Bank deposit pass book and a Westminster Bank deposit account book.

The donees claimed to be entitled to the money in the banks on the ground that they were given to them by a *donatio mortis causa.* Roxburgh, J., dismissed the action.

EVERSHED, M.R., said that the question whether there was a valid *donatio mortis causa* involved three points: (1) was there a sufficient "delivery" to the donees; (2) was there the requisite *animus donandi* having regard to acts done after the delivery; and (3) were the bank books such *indicia* of title as were necessary to constitute a valid *donatio mortis causa?* He (the learned judge) found, on the facts of the case, that the first two requirements were satisfied. The third question was the most difficult. No question arose as to the money in the Post Office savings bank, which had been held capable of a *donatio* in *In re Weston* [1902] 1 Ch. 680. As regards the three other sums, the real test was whether each bank book was the essential *indicium* or evidence of title, possession or production of which entitled the possessor to the money; and no such general practice had been proved as would lead to the conclusion that production of the books had become a dead letter. The third requirement was therefore likewise satisfied.

ASQUITH and JENKINS, L.JJ., concurred. Appeal allowed.

APPEARANCES: *C. L. Hawser* and *M. Briegel* (*Manches and Co.*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHANCERY DIVISION

BANKRUPTCY NOTICE: IRREGULARITY: WHETHER VALID

In re A Debtor (No. 21 of 1950); *ex parte* The Debtor *v.* Bowmaker, Ltd., and Another

Harman and Danckwerts, JJ. 13th November, 1950

Appeal from Windsor County Court.

The creditors' solicitors, who erroneously thought that Redhill County Court had bankruptcy jurisdiction, prepared a bankruptcy notice entitled "In the Redhill County Court." On discovering the position, they took it to Windsor County Court, where the Registrar did not notice the wrong title of the document handed to him and sealed it with the seal of Windsor County Court. The copy served on the debtor had the wrong title but the seal of Windsor County Court, but the other two copies were duly entitled "In the Windsor County Court." One of these copies was filed in the court files and the other was annexed to the affidavit of service. The bankruptcy petition of the creditors, which was founded on the failure of the debtor to comply with the bankruptcy notice, was opposed by the debtor on the ground that the notice was irregular. Windsor County Court made a receiving order and the debtor appealed.

HARMAN, J., said that a true copy of the bankruptcy notice was never served on the debtor, because it was headed "In the Redhill County Court," whereas it ought to have been headed "In the Windsor County Court." It had been suggested that this was a mere irregularity within the meaning of s. 147 of the Bankruptcy Act, 1914. But no amendment could cure the fact that the notice which was served on the debtor, and on which the petition was founded, was not a true copy. It was not possible for an alteration to date back so that the court could assume that the notice had not had this defect. The question for the court was whether the debtor *could* have been misled by the notice, not whether he was, in fact, misled. He [the learned judge] thought that the notice could have embarrassed the debtor. Accordingly he was bound by authority to say that this was an error which the court could not correct. The receiving order was bad and the bankruptcy petition, which was founded on a bad notice, had to be dismissed. *In re Evans* [1931] B & C.R. 48 followed.

DANCKWERTS, J., agreed. Appeal allowed.

APPEARANCES: *Duveen* (*Isadore Goldman & Son*); *K. G. Jupp* (*Peacock & Goddard*, for *W. Parkinson Curtis*, Bournemouth).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHARITABLE PURPOSES: BEQUEST "FOR THE AGED"

In re Bradbury; Needham *v.* Reekie

Vaisey, J. 17th November, 1950

Adjourned summons.

By a will dated 23rd January, 1948, X directed her trustees to invest the residue of her estate in order to constitute a fund named the X Bequest for the Aged and to "pay from this Bequest Fund a sum or sums for the maintenance of an aged person or persons in a nursing home approved by my trustees until the said fund shall be exhausted." The testatrix died on 28th July, 1948.

VAISEY, J., said that the other gifts which the testatrix had directed disclosed that the will, on the face of it, showed signs of a benevolent intention. The question was whether the bequest for the aged was a good charitable trust. The first of the two cases which appeared to come nearest to this case was *In re Roadley* [1930] 1 Ch. 524. The other was a very recent case, *In re Glyn Will Trusts* [1950] W.N. 373, where it was held that a trust for founding and endowing free cottages for old women of the working classes of the age of sixty years or upwards was a valid charitable trust; in that case Danckwerts, J., held that the words "aged, impotent and poor" in the preamble to the Statute of Elizabeth (the Poor Relief Act, 1601) would have to be read disjunctively because otherwise a gift to the poor would not be charitable unless the poor were also aged and impotent. This statement of Danckwerts, J., was perhaps, in a sense, *obiter*, because in the case before him there were sufficient indications of the necessity for the recipients of the bounty to be at any rate in need of pecuniary assistance. The present case was very near the line, but where a case was near the line, there must be a certain bias in the mind of the court in favour of doing what the testatrix quite obviously wanted to be done. The present gift was, therefore, validly given for a charitable purpose.

APPEARANCES: *D. H. McMullen*; *T. A. C. Burgess* (*Gregory, Rowcliffe & Co.*, for *Ernest Higginbottom*, Stockport); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHARITABLE PURPOSES: GIFT TO "OLD PEOPLE OVER SIXTY-FIVE YEARS"

In re Robinson; Davis *v.* Robinson

Vaisey, J. 23rd November, 1950

Adjourned summons.

By a will made on 11th September, 1947, the testator gave part of the residue of his estate to "the old people over sixty-five years" in a particular parish. The testator died on 8th May, 1948.

VAISEY, J., said that, as regards the gift to the old people, he had recently, in *In re Bradbury* (*supra*), followed the decision of Danckwerts, J., in *In re Glyn Will Trusts* [1950] W.N. 373, in which that judge indicated that the words "aged, impotent and poor" in the preamble to the Poor Relief Act, 1601, should be read disjunctively. In *In re Bradbury* he [the learned judge] had held that there was no reason for holding that aged people must also be poor to come within the meaning of the preamble. "The old people over sixty-five years" in a particular parish were a class of persons just as much objects of charity, having regard to the preamble of the statute, as the poor or the sick of the parish. The gift was, therefore, charitable.

APPEARANCES: *A. A. Baden Fuller*; *H. G. Watson*; *Maurice Berkeley*; *R. L. Stone*; *P. W. E. Taylor* (*Gibson and Weldon*, for *Lloyd & Robinson*, Stafford; *Simmonds, Church Rackham & Co.*, for *P. J. McKnight & Ryder*, Stoke-on-Trent); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: SECRET TRUSTS: LEGACY TO WITNESS

In re Young; Young *v.* Young

Danckwerts, J. 29th November, 1950

Adjourned summons.

By a will dated 25th April, 1942, the testator, a wealthy man, left his estate to his wife for life and appointed her and a solicitor as his personal representatives; he further directed that after his death his wife should make a new will leaving his estate for the purposes she knew he desired it to be used for, the permanent aid of distressed gentlefolk and similar purposes, and "leaving such small legacies as she knew I wish to be paid." One of the witnesses attesting the will was X, and after the testator's death on 20th December, 1943, the wife stated in an affidavit that one of the wishes which the testator had discussed with her as regards the devolution of his estate after his death was that X should receive a legacy of £2,000 out of the estate of the testator. The court was asked to determine whether X was entitled to receive that legacy, in view of the provisions of the Wills Act, 1837, s. 15, which provides that a legacy given to a witness attesting a will shall be null and void.

DANCKWERTS, J., said that the wife's evidence established the existence of secret trusts under the will and that the trusts were effective in respect of the estate. The whole theory of secret trusts was that they were unaffected by the Wills Act, since the forms required by that Act were entirely disregarded. Persons who took beneficially under secret trusts did not take by virtue of a gift under the will, but by virtue of the secret trusts imposed on a beneficiary who did in fact take under the will. Consequently a beneficiary who took under a secret trust was not affected by s. 15 of the Wills Act, 1837. Accordingly, the legacy intended for X was

effective and not forfeited. *Cullen* v. *A.-G. for Ireland* (1866), L.R. 1 H.L. 190, and *In re Gardner* [1923] 2 Ch. 230 followed; *In re Fleetwood* (1880), 15 Ch. D. 594, distinguished.

APPEARANCES: *Jennings*, K.C., and *Tatham*; *M. J. Albery* (*Foyer, White & Prescott*, for *Dunning, Rundle & Stamp*, Honiton); *Christie*, K.C., and *J. A. Plowman* (*Corner & Co.*); *Denys Buckley* (*The Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

PUBLIC HEALTH: PULLING DOWN OF BUILDINGS

Nalder and Others v. Ilford Corporation

Sellers, J. 16th October, 1950

Action.

The plaintiffs were a limited company, and a director owning most of the shares in it. The director held three houses—shops with living accommodation above—at Ilford on long leases from London County Council. In 1944 he let them on monthly oral tenancies to the company. Between 3rd September, 1939, and the end of 1945 he erected two structures on vacant land behind the houses. In 1946, after 17th January, three more structures were erected. In June, 1946, the defendant corporation wrote to the company that they proposed to exercise their statutory power to pull down the structures because they did not conform with the local byelaws, or to have them altered to do so. In January, 1947, they gave notice to the company under s. 65 (1) of the Public Health Act, 1936, requiring removal or alteration of the five structures. The notice was not complied with, and the corporation entered on the land and pulled the structures down under s. 65 (3). By that subsection, if a person told to pull down a work under s. 65 (1) fails to do so within twenty-eight days "or such longer period" as a court of summary jurisdiction may on his application allow, the local authority may pull down the work. By s. 65 (4) a notice under s. 65 (1) may not be given after twelve months from the date of the completion of the building in question. By s. 300 (3) where a right of appeal against a requirement by a local authority lies, "the document notifying to the person concerned the decision of the [local authority] in the matter shall" mention the fact. By s. 343 (1) "...'owner' means the person ... receiving the rack-rent of the premises ... 'rack-rent' ... means a rent ... not less than two-thirds of" a reasonable rent. By s. 1 (1) of the Building Restrictions (War-Time Contraventions) Act, 1946, where between 3rd September, 1939, and 26th March, 1946 ("the war period"), works have been carried out not complying with a building law, "any period limiting the enforcement of the law shall be calculated without regard to time elapsing during the war period ..." By s. 3 (1) where during the five years after the end of the war period it is proposed to enforce a building law, twenty-eight days' notice of the proposal shall be served on "every owner and occupier of the land." By s. 7 (1) "owner" has the meaning given to it in s. 188 (1) of the Housing Act, 1936, namely, "a person ... who is for the time being entitled to dispose of the fee simple ..." and "also a person ... entitled to the rents ... under a lease ... the unexpired term whereof exceeds three years." The plaintiffs now sued the corporation for damages for trespass on the ground that the pulling down was illegal for non-compliance with the Public Health Act, 1936.

(*Cur. adv. vult.*)

SELLERS, J., said that it was argued that the company were not the "owner" of the structures within the meaning of s. 343 (1) of the Public Health Act, 1936, and that the notices of January, 1947, were therefore not validly served under s. 65 (1). He found as a fact, however, that the rent paid by the plaintiff company for the premises was not a rack-rent. That being so, in his opinion the company were the person who would have received the rack-rent had the premises been let at a rack-rent, and they were therefore still the "owner" within the meaning of s. 343 (1). It was then argued that the notices were invalid as not complying with s. 300 (3) of the Act of 1936. He (his lordship) agreed that the effect of s. 65 (3) was to give a right to a person served with such a notice to apply to a court of summary jurisdiction to extend the statutory twenty-eight days. It was contended that such an application was a right of appeal which should have been stated on the notice in accordance with s. 300 (3). But s. 300 (1) distinguished between an "appeal" and an "application," and s. 300 (3) referred only to a right of appeal. An application under s. 65 (3) was not rightly described as an appeal. *Arlidge* v. *Tottenham Urban District Council* [1922] 2 K.B. 719 showed that, apart from statutory obligation, a notice was not invalidated if such a right were not stated in it, notwithstanding the desirability of inserting that information. Accordingly the notices of January, 1947, were valid. But their validity extended only to the three structures built in 1946. They did not, in respect of the two earlier structures, comply with s. 65 (4) of the Public Health Act, 1936, because they were given after the expiration of twelve months from the date of the completion of those structures. The corporation invoked s. 1 (1) of the Act of 1946, and argued that their letter of June, 1946, was sufficient notice to comply with s. 3 (1) of that Act, and that it was given within the extended time prescribed by s. 1 (1). But s. 3 (1) required the notice to be served on every owner. "Owner" was defined by s. 7 (1) of the Act of 1946 by reference to the definition in s. 188 (1) of the Housing Act, 1936. That definition included the plaintiff director, but the letter was sent only to the plaintiff company. Notwithstanding his close relationship with the company, it was not in fact a notice served on him even if it were found that he in fact knew of its contents. There would accordingly be judgment for the plaintiffs in respect of the two earlier structures. No special damage had been proved; but as the action was in trespass the plaintiffs were entitled to general damages, and they would each be awarded £25.

Judgment accordingly.

APPEARANCES: *W. G. Wingate* (*Bolton, Jobson and Yate-Lee*); *Basil Nield, K.C., Garth Moore* and *J. R. Macgregor* (*the Town Clerk, Ilford*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

NOTICE OF INTENTION TO PROVE PREVIOUS CONVICTIONS: THREE DAYS BEFORE "TRIAL"

R. v. Grant

Lord Goddard, C.J., Hilbery and Parker, JJ.
5th December, 1950

Appeal against sentence.

The appellant was sentenced by quarter sessions on two charges of larceny to which he had pleaded guilty before petty sessions on 3rd August, 1950, who had committed him to quarter sessions for sentence under s. 29 of the Criminal Justice Act, 1948. On that day he was served with the notice required by s. 23 of the Criminal Justice Act, 1948. He was sentenced on 30th August, 1950. His ground of appeal was that the notice was not served in accordance with s. 23 of the Act of 1948, as it had not been served three days before his "trial," that was, his appearance before the justices at petty sessions. By s. 23 (1) "For the purpose of determining whether an offender is liable to be sentenced to corrective training ... no account shall be taken of any previous conviction or sentence unless notice has been given to the offender ... at least three days before the trial that it is intended to prove the conviction or sentence ..."

LORD GODDARD, C.J., giving the judgment of the court, said that in their opinion s. 29 of the Act of 1948 clearly meant that, once a man was sent to quarter sessions for

sentence, he was to be treated in all respects as if he were being sent there for trial. It was, therefore, open to the police to serve a notice of previous convictions on a prisoner within the requisite time before he was brought before quarter sessions. If the police had done that, quarter sessions could then pass any sentence for which such notice was requisite. The court could not hold that the "trial" before the justices was a complete one. Quarter sessions accordingly had power to pass the sentence as the appropriate notice under s. 23 (1) had been given. The sentence of corrective training would be replaced by one of two years' imprisonment. Sentence varied.

APPEARANCES: *W. M. Huntley* (*Registrar of Court of Criminal Appeal*); *Eric Mills* (*Tarry, Sherlock & King*, for *Townsend, Calderwood & Story*, Swindon).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 15th December :—

Administration of Justice (Pensions)
Colonial Development and Welfare
Dangerous Drugs (Amendment)
Dundee Harbour and Tay Ferries Order Confirmation
European Payments Union (Financial Provisions)
Exchequer and Audit Departments
Expiring Laws Continuance
Glasgow Corporation Sewage Order Confirmation
Inverness County Council (Armadale Pier and Harbour, &c.) Order Confirmation
Kirkcaldy Burgh Extension, etc., Order Confirmation
Public Works Loans
Reinstatement in Civil Employment
Restoration of Pre-War Trade Practices
Ross and Cromarty County Council (Kyle of Lochalsh Fishery Pier) Order Confirmation
Solicitors
Superannuation

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time :—

Festival of Britain (Sunday Opening) Bill [H.C.] [12th December.

In Committee :—

Transport (Amendment) Bill [H.L.] [12th December.

B. DEBATES

On the Second Reading of the **Administration of Justice (Pensions) Bill,** LORD BALFOUR said that by enabling the judges and other judicial officers to exchange a part of their taxable pension for a tax-free lump sum the Government were giving certain servants of the Crown an advantage over their fellow citizens. There were tens of thousands of professional men who found it absolutely impossible to-day to accumulate any capital whatsoever for retirement. Men who had looked forward to retirement now had to work until they were virtually physically unable to provide for themselves. This Bill enabled certain persons to avoid this result. Suppose a board of directors gave a commercial man a discretionary pension of £20,000 a year. Could he sell part of his pension so that it became £15,000 a year and receive a lump sum of, say, £30,000 free of tax and sur-tax? And would the pension, if paid at the discretion of the board, escape death duties and estate duties? There were others than the judges who were equally deserving by reason of their contribution to our industrial and political life.

The LORD CHANCELLOR said there was nothing in the scheme outside the ordinary law of the land. It provided for a lump sum and whether that was liable to tax or not depended on the ordinary income tax law. He understood from the income tax authorities that it was not liable. [13th December.

C. QUESTIONS

Viscount ST. DAVIDS asked whether, in view of the small number of cases in which the services of a court welfare officer were used by divorce judges to investigate the affairs of the children involved, the Government would consider whether they could go further and require that an investigation be made in all such cases. The LORD CHANCELLOR said he did not think it would be useful or practical to require an investigation in all cases. In many cases where there was a dispute about custody or access the judge was himself able to decide what was the best solution in the interests of the children, without calling on the welfare officer. The judges in deciding such questions regarded the welfare of the children as being the paramount consideration. They were also fully aware of the desirability of the judge who had seen the parties and dealt with the controversial issues at the trial dealing also with questions relating to the children of the marriage. Viscount ST. DAVIDS said a number of noble lords would like to take this matter further along the lines recommended by the Denning Committee, and he hoped that time for a debate on the subject would be found after the Christmas recess. [12th December.

LORD MESTON asked whether the Government would repay development charges levied by, and paid to, the Central Land Board in respect of operations or uses which had subsequently become exempt from development charge by reason of the Town and Country Planning (Development Charge Exemptions) Regulations, 1950. Lord Meston added that some help in the matter might perhaps be derived from s. 73 of the Town and Country Planning Act, 1947, which appeared in certain circumstances to give the Central Land Board power not only to vary a development charge that had already been determined but also to repay such development charge in whole or in part.

The LORD CHANCELLOR said he could see no justification for so doing. Firstly, in very many cases if the charge were repaid to the man who had originally paid it, he would in fact be paid twice as he would himself have already had the fullest benefit from his payment by selling or passing on the business he was building together with the rights which were attached to it by virtue of his passing it on to someone else. Secondly, it would be a very bad principle to establish that whenever a concession were made everybody who in the past had not had the concession must be compensated. He could imagine no principle more damaging to the granting of concessions. [13th December.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :

Courts Martial (Appeals) Bill [H.C.] [13th December.

To establish a Courts Martial Appeal Court and provide for appeals thereto from courts martial and certain naval disciplinary courts; to make provision with respect to the office of Judge-Advocate General; and for purposes connected with the matters aforesaid.

Criminal Law Amendment Bill [H.C.] [13th December.

To repeal the words in paras. (1) and (4) of s. 2 and para. (2) of s. 3 of the Criminal Law Amendment Act, 1885, which restrict the operation of those paragraphs in the case of a woman or girl who is a common prostitute or of known immoral character or whose usual place of abode is a brothel.

Sea Fish Industry Bill [H.C.] [14th December.

To make provision for the reorganisation, development and regulation of the white fish industry; to amend the law relating to fishery harbours, the catching and landing of sea fish and other matters affecting or connected with the sea fishing industry; to abolish the Scottish Fisheries Advisory Council; and for purposes connected therewith.

Town and Country Planning Bill [H.C.] [12th December.

To bring certain works for making good war damage within the definition of development in the Town and Country Planning Act, 1947, and the Town and Country Planning (Scotland) Act, 1947, and within the Third Schedule to each of those Acts; and to extend the period limited by s. 23 of the first-mentioned Act for serving notices thereunder for the enforcement of conditions subject to which planning permission has been granted.

Read Second Time :

Livestock Rearing Bill [H.C.] [11th December.

Salmon and Freshwater Fisheries (Protection) (Scotland Bill [H.C.] [13th December.

B. Debates

The debate on the Second Reading of the **Leasehold Property (Temporary Provisions) Bill** was continued by Mr. Ungoed-Thomas, who said the limitation of its provisions to shops only was too restricted. The line of demarcation should come, not between shops and other business premises, but between profit-making premises and non-profit-making premises. It had been the unanimous decision of the Leasehold Committee that protection should not be limited only to shops. Secondly he considered the clause giving the court discretion to extend a shop tenancy required to be drawn with much greater precision. There were no principles established in the clause for the guidance of the courts. It was an onerous duty to put on the court. The very wide discretion given to the courts in the Inheritance (Family Provision) Act was found very difficult for the judges to administer. The tenant should be given a *prima facie* right of renewal, and cl. 10 should go on to provide that renewals should not be granted in particular cases.

There were several cases in which refusal of a new lease was made compulsory. These cases included alternative accommodation and greater hardship—both were matters of considerable complexity and had led to considerable heart-burnings in the case of the Rent Restriction Acts. He hoped both these grounds could be left out of this short emergency measure. Whilst welcoming Pt. I of the Bill, he would have preferred that the Rent Restriction Acts should be immediately applied to ground leases. He also hoped the Bill was a preliminary to leasehold enfranchisement; a permanent scheme of security for all business premises; and a permanent scheme of security of tenure for all residential tenants outside the Rent Restriction Acts.

Mr. Donald Wade hoped the Bill would be placed on the Statute Book as quickly as possible so as to avoid further hardships. He expressed doubt as to whether a tenant who had already received notice to quit before the Bill became operative would be covered by the phrase in cl. 2: "... living in the property ... in continuation of the tenancy," or the phrase in cl. 8: "... occupier of a shop under a tenancy ..." On the other hand, if the test were actual occupation there would seem to be every reason for the landlord to hurry up and get the tenant out or to get him to agree to a better rent before the Bill came into force. Mr. Wade said he would like to see a radical reform of the Landlord and Tenant Act, 1927. This Act had been intended to give greater security of tenure, but so many conditions had been inserted for the benefit of the landlord that it had not been very useful to the business man. He was critical of the Bill inasmuch as it created a good deal of uncertainty. The tenant did not quite know what to do about alterations and improvements because he did not know what might happen at the end of his two years. He regretted there would be no appeal on either fact or law, and thought that as regards fixing rents, imposing conditions, etc., there would be considerable variations in the different county courts which would cause a sense of grievance.

Mr. Donnelly said that in his constituency (Pembroke Dock) 96 per cent. of properties were leasehold and whole streets were now falling in. Ground rents of £2 or £3 a year were going up to £30, £40 or even £50 a year. In other cases tenants had had county court proceedings taken against them if they did not agree to buy the freehold for £1,000. He was sorry the standstill period was not five years instead of two.

Mr. W. T. Aitken said that all responsible investors in freehold ground rents would support any constructive proposals designed to prevent hardship and injustice to leaseholders. He pointed out that both the majority and minority reports of the Committee acknowledged the perfectly legitimate interest of the investor in freehold ground rents not only in the income from his investments but in the reversion as well. It had been recognised that on leasehold enfranchisement the compensation to the ground rent owner should not be based on the capitalised value of the ground rent only. He did not agree that large numbers of leases were falling in at the present time. His main criticism, however, said Mr. Aitken, was that the present system removed even the skeleton of a policy for maintenance and repairs. It seemed a great mistake to suspend maintenance covenants for two years. Even in the Leasehold Property (Repairs) Act, 1938, it had been found necessary to state that certain action would have to be taken. That Act was passed for the same general purpose as was the present Bill—to help release the leaseholder from some of the excessive burdens under covenants in respect of repairs, but exceptions were made to any relief given in respect of any action necessary or proper for putting or keeping a property in a sanitary condition, or for the maintenance or preservation of the structure, or of any statutory liability to keep the house in all respects reasonably fit for human habitation. These were absolute fundamentals of normal good maintenance of property. He hoped some amendment would be made in that direction.

Mr. Hayman denied that the leasehold system conferred any planning benefits. He hoped that leasehold enfranchisement would not be long delayed and pointed out that when it came the present increases in ground rents would affect the compensation which the Government would ultimately have to pay. Mr. Henry Brooke said there were several large leasehold estates in his constituency (Hampstead). When such leases fell in it was usually found that the lessee himself was not in occupation, and normally the owners refused to extend or renew a lease if the lessee was an absentee. Where the tenant was in occupation it was the practice of responsible ground landlords to re-let at either annual rents related to market values or on quarterly, monthly, or weekly tenancies. So far as the repairing covenants were concerned, it was extremely difficult to get the necessary licences for repairing and remodernising, and, due to the increased costs, many lessees just had not got the money necessary to fulfil their obligations. Many had misunderstood the terms of the contract they had entered into. Unless clear understanding by the lessees of their obligations throughout the term could be achieved, the leasehold system had a black mark against it. So far as he could see the Bill did not require a lessee to remain in occupation during the period of the two-year moratorium. It seemed that he could at any time dispose of the asset at an increased value. This should be amended.

Mr. C. W. Gibson said very many people had thought they had bought their houses and were now finding they had not bought them at all; indeed, the landlord could take it from them or impose heavy and onerous conditions. Mr. Turner-Samuels said this sounded like a serious reflection on the legal profession. Was the honourable member saying that people bought houses and then found they had not bought them at all? The Attorney-General said in many cases people thought their ground rent was something like tithe. Continuing, Mr. Gibson said thousands of people were under the impression that at the end of the lease, whether it be twenty years or ninety years, the house was theirs. They could not understand why, having as they thought bought the house, the landlord could evict them. He thought these problems would not be solved until the land was publicly owned.

Sir Austen Hudson said it would be convenient if provision could be made so that leases fell in together in blocks. At present buildings were being converted piecemeal, whereas if whole blocks of buildings fell in together they could be modernised and converted into suitable dwellings. In some parts where there were large areas of Crown property unscrupulous people had bought up the leases and had put the screw on the sub-tenants, who were not rent-restricted. He hoped the Minister of Health would use his requisitioning powers in these cases.

Mr. Manningham-Buller said the Bill was a disappointing one. The Government's main objection was to the leasehold system as a whole. But in the Town and Country Planning Act, 1947, it was provided that no one in blitzed areas should be allowed to obtain the freehold. There were to be long leases limited to ninety-nine years. Again, in the New Towns Act, it was laid down that there should be long leases but no freeholds. He did not agree that in fixing the ground rent the value of the building to be erected had not been considered. A landlord would obviously charge a higher rent for a house than he would for the ground on which it stood. Again, the report had found that very few occupiers in South Wales were in fact the ground lessees—they held from intermediate landlords. At the same time, no good landlord wanted to see long-standing tenants ejected, and protection could have been given more easily by simply extending the Rent Restriction Acts. Protection should, he thought, be limited to those who had been in occupation for at least three years. He could see no valid reason for continuing leases at rents fixed eighty or ninety years ago—especially when rents of shops were to be adjusted, and when, in cases where there was a sub-tenant, the tenant was to drop out and the sub-tenant to pay the ground landlord the rent he had been paying the tenant, so that the ground landlord would now be getting a rack-rent. The clause suspending the enforcement of covenants would obviously have to be much altered.

Replying to the debate, the Solicitor-General said to convert long-term leaseholds into rent-restricted tenancies would have meant rewriting every lease—the burdens in all the covenants would have had to be adjusted to conform to what would be found in modern occupational rent-controlled leases. To alter the

provision exempting the tenant from the covenant to repair would be to give him a quite illusory protection. The landlord would always sue for damages for breach of covenant after the expiry of the two years, and he could thus sue a tenant who sub-let the fag-end or the extension, or if he assigned it the assignee would be liable to the ground landlord as the right to enforce the covenant would run with the land. Clause 5 would be amended so that where a sub-tenant was not himself in occupation but had himself let the premises off to sub-tenants, the latter sub-tenants would be given equal protection. There were serious difficulties in the way of extending protection to all classes of business premises. If it were extended to factories the repercussions throughout the industrial world would be very great, but if some form of suitable definition could be found to bring in professional premises whilst excluding business premises in the larger sense, the clause might be extended in committee. As regards appeals, it was felt that these would mostly be against the view taken by the county court judge of the facts, whereas an appeal to the Court of Appeal could be on law only. Also, it would be impracticable to expect a tenant to vacate premises whilst an appeal was pending, and as appeals took some time to hear—especially if they went to the House of Lords—the lease would have run out almost before the appeal was heard. Under s. 111 of the County Courts Act, 1934, there was already machinery available for removing a case to the High Court if matters of importance were involved, so that if the parties so desired they could ordinarily secure that the case was heard in the High Court. [6th December.

C. QUESTIONS

Mr. RICHARD STOKES stated that the total sum advanced under s. 1 of the Building Materials and Housing Act, 1945, was £6,330,000, and the sum outstanding on 30th September, 1950, was £2,480,000. [11th December.

The ATTORNEY-GENERAL said that a person appealing to the Lands Tribunal from the decision of a local valuation court need not attend in person but might be represented by a barrister or a solicitor or, with the leave of the tribunal, by any other person. Personal attendance was also unnecessary in the case of proceedings before the local valuation committee, and there therefore did not appear to be any need for any special provision to be made for persons serving abroad in His Majesty's Forces to be represented before these tribunals. It was not at present intended that free legal aid should be made available in proceedings before local valuation courts or before the Lands Tribunal. [11th December.

The CHANCELLOR OF THE EXCHEQUER stated that under s. 30 (2) of the Exchange Control Act, 1947, the consent of the Treasury was required for the transfer abroad of control of a limited liability company. [12th December.

Mr. H. B. TAYLOR (Parliamentary Secretary to the Ministry of National Insurance) said that the Minister hoped very shortly to introduce legislation to authorise payment out of the Industrial Injuries Fund of additional allowances in pre-1924 workmen's compensation cases. The general effect would be that those concerned would be put as nearly as possible in the same financial position as if the later Workmen's Compensation Acts had applied to them. [12th December.

STATUTORY INSTRUMENTS

Aliens (Landing Conditions) Instrument, 1950. (S.I. 1950 No. 1963.)

This instrument revokes, in the case of certain aliens permitted to land without limit on the duration of their stay, the condition that they should register at once with the police and enter until permitted to leave such employment as the Ministry of Labour and National Service might direct. Where leave to land was granted before 2nd January, 1948, the revocation operates from 1st January, 1951; where it was granted after 1st January, 1948, from the date on which three years will have elapsed from the date on which the alien was first given permission to land. The instrument also revokes, as from 1st January, 1951, a similar condition in relation to aliens originally required to take domestic employment in a hospital or institution and not to remain in the United Kingdom more than twelve months.

Borstal (Scotland) Rules, 1950. (S.I. 1950 No. 1944.)

Calf Rearing Scheme (England, Wales and Northern Ireland) (Variation of Payment) Order, 1950. (S.I. 1950 No. 1943.)

Carriage by Air (Parties to Convention) Order, 1950. (S.I. 1950 No. 1970.)

Colonial Stock Acts Extension (Bechuanaland Protectorate) Order, 1950. (S.I. 1950 No. 1975.)

Colonial Stock Acts Extension (Swaziland Protectorate) Order, 1950. (S.I. 1950 No. 1976.)

Defence Regulations (No. 9) Order, 1950. (S.I. 1950 No. 1964.)

Defence Regulations (No. 10) Order, 1950. (S.I. 1950 No. 1965.)

Defence Regulations (Isle of Man) (No. 2) Order, 1950. (S.I. 1950 No. 1974.)

Double Taxation Relief (Taxes on Income) (Brunei) Order, 1950. (S.I. 1950 No. 1977.)

Double Taxation Relief (Taxes on Income) (Ceylon) Order, 1950. (S.I. 1950 No. 1978.)

Double Taxation Relief (Taxes on Income) (Sarawak) Order, 1950. (S.I. 1950 No. 1979.)

Eastern African Court of Appeal Order in Council, 1950. (S.I. 1950 No. 1968.)

Eggs (Great Britain and Northern Ireland) (Amendment No. 9) Order, 1950. (S.I. 1950 No. 1958.)

Emergency Laws (Miscellaneous Provisions) (Colonies, etc.) Order in Council, 1950. (S.I. 1950 No. 1972.)

Gas (Conversion Date) (No. 23) Order, 1950. (S.I. 1950 No. 1957.)

London-Brighton Trunk Road (Sayers Common and Devonshire Villa Diversions) Order, 1950. (S.I. 1950 No. 1983.)

Matrimonial Causes Rules, 1950. (S.I. 1950 No. 9140.)

Milk Distributive Wages Council (England and Wales) Wages Regulation Order, 1950. (S.I. 1950 No. 1950.)

National Health Service (General Dental Service and Fees) (Scotland) Amendment Regulations, 1950. (S.I. 1950 No. 1945.)

National Insurance (Contributions) Amendment (No. 2) Regulations, 1950. (S.I. 1950 No. 1947.)

National Insurance (Residence and Persons Abroad) Amendment (No. 2) Regulations, 1950. (S.I. 1950 No. 1946.)

Northern Rhodesia (Native Reserves) (Amendment) Order in Council, 1950. (S.I. 1950 No. 1966.)

Retention of Cable under Highway (Essex) (No. 1) Order, 1950. (S.I. 1950 No. 1951.)

Retention of Cables under Highway (Midlothian) (No. 1) Order, 1950. (S.I. 1950 No. 1953.)

Road Haulage Wages Council Wages Regulation Order, 1950. (S.I. 1950 No. 1942.)

Rules of the Supreme Court (No. 2), 1950. (S.I. 1950 No. 1941.)

Seed Potatoes (Amendment) Order, 1950. (S.I. 1950 No. 1962.)

South West Wales River Board Constitution Order, 1950. (S.I. 1950 No. 1969.)

Stopping up of Highways (Cumberland) (No. 5) Order, 1950. (S.I. 1950 No. 1960.)

Stopping up of Highways (London) (No. 14) Order, 1950. (S.I. 1950 No. 1952.)

Utility Apparel (Infants' and Girls' Wear) (Manufacture and Supply) (Amendment No. 3) Order, 1950. (S.I. 1950 No. 1931.)

Utility Woven Blankets (Marking and Manufacturers' Prices) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1929.)

Wild Birds Protection (Oxfordshire) Order, 1950. (S.I. 1950 No. 1948.)

SOCIETIES

The President, the Vice-President and the Council of The Law Society gave a dinner on 14th December at their hall. Those who accepted invitations included the Lord Chief Justice of England, Lord Oaksey, Lord MacDermott, Lord Schuster, K.C., Lord Justice Cohen, Lord Justice Jenkins, Sir Hartley Shawcross, K.C., M.P., Sir Lionel Leach, K.C., Mr. Justice Croom-Johnson, Mr. Justice Vaisey, Mr. Justice Holroyd Pearce, Mr. Justice Lloyd-Jacob, Sir Henry MacGeagh, K.C., Lieutenant-Colonel Donald McClure, the Hon. Sir Albert Napier, K.C., Sir Theobald Mathew, Sir Harold Fieldhouse, Sir William Fitzgerald, Sir Howard Roberts, Mr. J. S. Muirhead, Sir Godfrey Russell Vick, K.C., Sir Clement Hallam, Sir Harry Pritchard, Sir Stanley Pott, Sir Randle Holme, Judge Fraser Harrison, Mr. F. Bertram Reece, Mr. L. C. Holloway, and Mr. F. Wyndham Hirst.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL]

Solicitors' Remuneration

Sir,—Everything continues to rise in price except solicitors' costs and the programme of re-armament may well bring about a further substantial increase in the cost of living. Therefore, even if The Law Society should be successful in getting a small increase in costs in the near future, it might well prove inadequate within six months.

Having regard to this fact and the difficulty of getting any increase at all I would suggest that a more imaginative approach is necessary.

Let the Society promote a private Bill in Parliament to give solicitors the right to fix their own remuneration. This is a proposal which can be supported by the public. It will be likely to get much more support than a mere proposal for an increase in charges, because the request is a reasonable one.

Members of other professions would be sympathetic to it and the authorities would, I think, find it difficult to resist.

London, S.W.1. R. S. W. POLLARD.

NOTES AND NEWS

Honours and Appointments

Mr. JAMES MOULD, K.C., and Mr. ARCHIE PELLOW MARSHALL, K.C., have been elected Masters of the Bench of Gray's Inn.

The following appointments are announced in the Colonial Legal Service: Sir G. L. HOWE, Attorney-General, Nigeria, to be Chief Justice, Hong Kong; Mr. R. H. MURPHY, Resident Magistrate, Tanganyika, to be Chief Registrar, Supreme Court, Gold Coast; Mr. I. H. CRUCHLEY to be Resident Magistrate, Jamaica; and Mr. F. D. ROBERTSHAW to be Legal Officer, Somaliland Protectorate.

Personal Notes

Mr. E. L. Fisher is to resign the offices of clerk to the Banbury County Sessions and superintendent registrar of births, deaths and marriages for the Banbury Registration District at the end of the year.

Mr. Samuel Freeman was elected an honorary life member of the Halifax Incorporated Law Society at the annual general meeting on 30th November, when he resigned as honorary librarian of the society.

Mr. W. E. Channon, managing clerk to Messrs. Mee & Co., of Retford, has been presented with a cheque by the firm on the completion of seventy years' service. Two other clerks with the firm, Mr. E. Warburton and Mr. T. W. Lister, have sixty years' service to their credit.

With every employee a member of the firm's national savings group, Messrs. Finch, Turner & Tayler, solicitors, won the City of London contest for the highest percentage of national savings group members and savings over six months, in firms of twenty-five and under in staff. The group secretary, Mr. G. Glenister, received the winning plaque from the Lord Mayor at the Mansion House on 6th December.

Miscellaneous

WAR DAMAGE CLAIMS UNDER THE PLANNING ACT

The Central Land Board believe there may still be some owners of war-damaged property entitled to claim a payment under the Town and Country Planning Act, 1947, who have not yet done so.

These claims can be made on certain "total loss" properties where the War Damage Commission assessed a value payment, and must be lodged with the Board before 1st February, 1951.

The Board have published an explanatory leaflet on these claims—S.1.A. (War Damage), obtainable from the local offices of the Board and the War Damage Commission.

Payments are in cash and include interest. They are separate from the £300m. on which claims had to be lodged by June, 1949.

Members of Area and Local Committees in The Law Society's No. 5 (South Wales) Legal Aid Area will hold their annual general meeting at the Guildhall, Swansea, on 12th January, at 2 p.m.

The Consultative Committee for Law of the Kennington College of Commerce and Law were "At Home" in the College Hall, on 6th December, 1950, in order to meet the student body. The proceedings were opened by a short introductory speech by the Principal, Mr. D. Wilsden, M.A., LL.B., which was followed by a short address by the Hon. Mr. Justice Slade (in the chair). Mr. R. McKinnon-Wood, Chairman of the L.C.C. Education Committee, then spoke, after which the rest of the evening was devoted to conversation, over refreshments, between the staff, students and committee members. The proceedings were brought to a close by a vote of thanks, moved by Mr. N. H. Oster, and a member of the Students' Law Club Committee.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on 8th January, 1951, at 11 a.m.

Wills and Bequests

Mr. W. Standring, retired solicitor, of Folkestone, formerly of Rochdale, left £35,094 (£34,951 net).

OBITUARY

MR. E. W. EDWARDS

Mr. Edward Wynn Edwards, retired solicitor, of Abergele, formerly of Oswestry, died on 11th December, aged 71. He was admitted in 1903.

MR. F. J. LAMBERT

Mr. Francis John Lambert, O.B.E., solicitor, of Gateshead, died recently, aged 71. He was admitted in 1909.

MR. T. LAMBERT

Mr. Thomas Lambert, solicitor, of Gateshead, for thirty-eight years clerk to Gateshead Magistrates until his retirement in 1948, died on 6th December, aged 73. He was admitted in 1900.

MR. F. E. MARSHALL

Mr. Francis Eden Marshall, solicitor, of Oxford, has died at the age of 87. He was admitted in 1888 and retired in 1944, being the last Coroner for Oxford University.

MR. A. J. McDIARMID

Mr. Arthur John McDiarmid, for over sixty-three years clerk with Messrs. Emmerson, Brown & Brown, solicitors, of Deal, died on 13th December, aged 81.

MR. S. G. POLEHILL

Mr. Sidney Gilbert Polehill, retired solicitor, of Salisbury, has died, aged 80.

MR. H. SAUNDERS

Mr. Harold Saunders, solicitor, of Pontypool and Blaenavon, has died at the age of 76. He was admitted in 1904.

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